

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY J. FLOWERS and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, OH

*Docket No. 02-830; Submitted on the Record;
Issued February 13, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant's injury on March 14, 2001 was sustained in the performance of duty.

On October 1, 2001 appellant, then a 57-year-old maintenance support clerk, filed a claim for a traumatic injury, Form CA-1, alleging that on March 14, 2001 at approximately 7:20 a.m., he suffered a fractured right foot.¹ Appellant stated that, when he started to cross the street at an intersection, a vehicle started to make a right turn on red in front of him causing him to make a quick move backward to avoid being hit. Appellant's supervisor stated that appellant was off work from June 1 to October 1, 2001 due to another work-related injury.

In support of his claim, appellant submitted October 2 and 5, 2001 statements from the employing establishment controverting appellant's claim. The employing establishment contended that appellant's right foot injury was not sustained while he was in the performance of duty since it was before working hours, was on a public street and the parking lot he had just left was not owned, controlled or maintained by the employing establishment; appellant's October 1, 2001 statement of the events on March 14, 2001; a diagram and description of the March 14, 2001 incident; an October 4, 2001 attending physician's report by Dr. Gary J. LaBianco, who diagnosed a stress fracture of the right foot, second metatarsal; and a September 24, 2001 work restriction evaluation by Dr. LaBianco, who returned appellant to work with restrictions.

By letter dated October 17, 2001, the Office of Workers' Compensation Programs requested additional information from appellant. Specifically evidence that the employing establishment owned, controlled or otherwise maintained the parking lot where he parked.

On October 23, 2001 the record was supplemented with October 1 and 15, 2001 duty status reports by Dr. LaBianco who diagnosed a stress fracture, right foot; and an October 4,

¹ Appellant stated that the incident occurred at approximately 7:20 a.m. The employing establishment stated that appellant's fixed hours of work were from 7:30 a.m. to 4:00 p.m.

2001 attending physician's report by Dr. LaBianco who diagnosed stress fracture right foot, second metatarsal.

On November 2, 2001 the record was supplemented with office notes by Dr. LaBianco covering the period September 6 through October 29, 2001.

On November 15, 2001 the record was supplemented with an October 18, 2001 disciplinary letter from the employing establishment to appellant; a November 12, 2001 letter from the president of branch 45 of the National Association of Letter Carriers stating that appellant parked at the church parking lot at a reduced rate arranged by him; a November 15, 2001 letter from appellant who stated that the church parking lot was considered an alternative parking lot for postal employees; an October 29, 2001 statement from a coworker who stated that "as a matter of convenience I have been parking at [the church parking lot]; and an October 29, 2001 report by Dr. LaBianco.

By decision dated November 19, 2001, the Office denied the claim, stating that appellant did not establish that he sustained an injury in the performance of duty. The Office determined that appellant was at a public intersection and that the parking lot where he just left was not owned, controlled or maintained by the employing establishment.

The Board finds that appellant has not met his burden of proof in establishing that he was in the performance of duty at the time of his March 14, 2001 injury.

The Board has recognized as a general rule, that off-premises injuries sustained by employees having fixed hours and places of work, while going to or coming from work are not compensable as they do not arise out of and in the course of employment.² The Board has also pointed out that factors, which, determine whether a parking lot used by employees may be considered a part of the employing establishment's "premises" include whether the employing establishment contracted for the exclusive use by its employees of the parking area, whether parking spaces on the lot were assigned by the employing establishment to its employees, whether the parking areas were checked to see that no unauthorized cars were parked in the lot, whether parking was provided without cost to the employees, whether the public was permitted to use the lot and whether other parking was available to the employees.³ Mere use of a parking facility, alone, is not sufficient to bring the parking lot within the "premises" of the employing establishment.⁴ The premises doctrine is applied to those cases where it is affirmatively demonstrated that the employer owned, maintained, or controlled the parking facility, used the facility with the owner's special permission or provided parking for its employees.⁵

² *Melvin Silver*, 45 ECAB 677, 682 (1994).

³ *Rosa M. Thomas-Hunter*, 42 ECAB 500, 504-05 (1985); *Edythe Erdman*, 36 ECAB 597, 599 (1985).

⁴ *Id.*

⁵ *Id.*

In the present case, the evidence establishes that appellant sustained an injury while crossing at a public intersection while going to work. The evidence submitted by appellant is not sufficient for the Board to find that the church parking lot constituted part of the premises of the employing establishment. While the employing establishment's employees had permission to park at the church parking lot, the employing establishment stated that the lot was not owned, controlled or maintained by it. There is no evidence that the employing establishment had contracted for use of the parking lot; had assigned parking spaces on the lot to its employees; or policed the lot to see that unauthorized cars were not parked in the facility.⁶ The evidence submitted by appellant does not establish that the employing establishment's premises should extend to the church's parking lot. Therefore, appellant's injury was not sustained in the performance of duty.⁷ Consequently, appellant has failed to establish that he sustained an injury in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated November 19, 2001 is hereby affirmed.

Dated, Washington, DC
February 13, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁶ *Id.*

⁷ *Id.*